

ENTRAD: 04/10/96

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION 1996 JUN -6 AM 9:14

UNITED STATES OF AMERICA

PLAINTIFF,

VS.

ANDERSON, GREENWOOD & COMPANY
ET AL.,

DEFENDANTS.

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FINANCIAL MANAGER
SECTION

CIVIL ACTION NO.

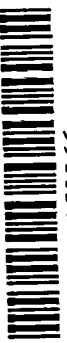
H-91-3529

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6/4/96

CONSENT DECREE BETWEEN THE UNITED STATES AND
MASSEY GRINDING SERVICES, INC.,
OLSHAN DEMOLISHING CO., INC.,
PACIFIC MOLASSES COMPANY,
PLOSS INDUSTRIES, INC., AND
ROBINSON IRON & METAL COMPANY

The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") has filed a complaint ("Complaint") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607, for the abatement or cost of abatement of any release or threat of release of hazardous substances from a facility known as the Sheridan Disposal Services Site ("Site"), located on a cut bank above the Brazos River ("River"), approximately nine miles north-northwest of the City of Hempstead, Waller County, Texas.

The Complaint alleges that the defendants named in the complaint are persons liable under CERCLA and seeks: (1) to impose liability for the abatement of the release or threatened release of hazardous substances at or from the Site that would



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pose an endangerment to public health and the environment; and (2) recovery of response costs, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, incurred by the United States and (3) a declaratory judgment for recovery of future response costs incurred by the United States pursuant to Section 107.

The United States has incurred response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

Certain of the defendants ("Settlers") desire to make a cash payment to settle their liabilities as currently alleged by the United States for its response costs with respect to the Site to avoid difficult, prolonged, and complicated litigation among the Settlers and the United States.

Pursuant to CERCLA Section 122, 42 U.S.C. §9622, the United States and the Settlers each stipulate and agree to the making and entry of this Consent Decree ("Decree") prior to the taking of any testimony, based upon the pleadings herein, and without any admission of liability or fault as to any allegation or matter arising out of the pleadings of any party or otherwise.

Each undersigned representative of the Settlers certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to this document.

The undersigned representatives of the United States certify that they are collectively authorized to enter into the

terms and conditions of this Decree and to execute and legally bind the United States to this document.

NOW, THEREFORE, without trial, adjudication, or admission of any issue of law, fact, liability, or responsibility by the Settlers, and without the Decree being admissible as evidence in any proceeding except in a proceeding to enforce the terms of this Decree or as otherwise specifically provided in this Decree, it is hereby ORDERED, ADJUDGED, AND DECREED THAT:

I. JURISDICTION

The Court has jurisdiction over this matter and the Parties pursuant to Section 113(b) of CERCLA. 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. The Parties agree not to contest the jurisdiction of the Court to enter this Decree or in any subsequent action by the Parties to enforce, modify, or terminate it. The Complaint states a cause of action upon which, if the allegations were proved, relief can be granted.

II. PARTIES

The parties to this Decree are the United States of America on behalf of the United States Environmental Protection Agency and Massey Grinding Services, Inc., Olshan Demolishing Co., Inc., Pacific Molasses Company, Ploss Industries, Inc., and Robinson Iron and Metal Company ("the Settlers").

III. STATEMENT OF PURPOSE

The purpose of this Decree is to: (a) protect human health and the environment from the release or threatened release of hazardous substances at or from the Site; (b) fund and

implement the Remedial Action; (c) provide for recovery of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at or from the Site; and (d) the resolution of claims by the United States against the Settlers.

IV. SITE HISTORY

Sheridan Disposal Services, Inc. operated a commercial waste disposal facility at what is now known as the Sheridan Site from about 1958 to 1984. A wide variety of hazardous substances, including organic and inorganic chemicals and solid wastes were disposed of at the Site. The facility treated waste by steam distillation, open burning and incineration. A lagoon or pond area was developed in a low-lying area of the Site that was used as a holding pond and for disposal of overflow wastes and waste treatment residues. In 1976, the facility initiated use of an evaporation system for disposal of water accumulated in the pond area.

The Sheridan Site was proposed for listing on the National Priorities List in June 1986. At that time a group of companies identified by the EPA as potentially responsible parties had already formed the Sheridan Site Committee and were working cooperatively with the State of Texas in investigating site conditions and possible remedial alternatives. For purposes of these studies, the Site was divided into a Source Control Operable Unit and a Ground Water Operable Unit. This Decree addresses the Settlers' liability with respect to the Source

Control Operable Unit only; it does not address the Ground Water Operable Unit. Any relief and any recovery of response costs for the Ground Water Operable Unit shall be pursued separately and apart from any actions related to this Decree and the Source Control Operable Unit.

In November, 1988, EPA announced that these studies were completed and that public comments were being accepted on the range of alternatives for the Source Control Operable Unit. EPA's public notice stated its preference for the biological treatment remedial alternative. On November 22, 1988, a public meeting was held at the Waller County Courthouse. Approximately 40 people attended. Additional persons responded to the studies by filing written comments.

On December 29, 1988, the Record of Decision ("ROD") for the Source Control Operable Unit was issued for the Sheridan Site. The ROD selected the biological treatment alternative. The Sheridan Site Committee, representing 37 Settlers and 68 De Minimis Settlers, has agreed in a separate Consent Decree to fund and perform the Remedial Action for the Source Control Operable Unit.

V. BINDING EFFECT

This Decree applies to and is binding upon the Settlers their officers, agents, servants, employees, successors, assigns, and those persons in active concert or participation with them who receive actual notice of this Decree and the United States.

VI. DEFINITIONS

A. The principal terms used herein are defined as follows:

CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

Costs: All oversight, administrative, enforcement, and response costs, direct or indirect, incurred or to be incurred by the United States relative to the Site.

DOJ: United States Department of Justice.

EPA: The United States Environmental Protection Agency.

Future Liability: Any and all liability or other civil obligation arising from or relating to the Site resulting from any future release or threatened future release of a hazardous substance that arises after Certification of Completion.

NCP: The National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part 300, as amended.

NPL: The National Priorities List, 40 C.F.R. Part 300, App. B.

Owner/Operator: Sheridan Disposal Services and Duane Sheridan.

Parties: The United States and the Settlers herein.

Record of Decision or ROD: The document signed by the EPA Region VI Regional Administrator on December 29, 1988, which describes the Remedial Action to be conducted at the Site.

Remedial Action: The implementation of the remedy selected by EPA for the Source Control Operable Unit at the Site.

RI/FS: The Remedial Investigation and Feasibility Study formally approved by EPA.

Sheridan Site or Site: A "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), that has been listed on the NPL, described above.

State: The State of Texas.

Superfund: The Hazardous Substances Superfund, 42 U.S.C. § 9631(a).

VII. PREAUTHORIZATION

Nothing in this Decree shall be considered to be a preauthorization of the CERCLA claim within the meaning of Section 111 of CERCLA and 40 CFR § 300.25(d).

VIII. PAYMENT

A. The Settlers shall, within thirty (30) days of entry of this Partial Consent Decree, pay jointly and severally to the United States a total of thirty-two thousand one hundred sixty dollars and no/100 (\$32,160). Each Settler shall respectively pay to the Hazardous Substance Superfund the following sums:

1. Massey Grinding Service, Inc., shall pay fifteen thousand dollars and no/100 (\$15,000);

2. Olshan Demolishing Co., Inc., shall pay two thousand six hundred sixty dollars and no/100 (\$2,660.00);

3. Pacific Molasses Company shall pay seven thousand five hundred dollars and no/100 (\$7,500);

4. Ploss Industries, Inc., shall pay five thousand dollars and no/100 (\$5,000); and

5. Robinson shall pay two thousand dollars and no/100 (\$2,000).

B. Interest shall accrue on any amount due, owing and unpaid at the rate provided for under 42 U.S.C. § 9607(a).

C. The unwillingness or failure to pay or the insolvency of any signatory whether or not it is through formal bankruptcy proceedings shall not affect or discharge the obligations of the remaining signatories to this Decree. In any such event, the remaining Settlers will be responsible jointly and severally for full satisfaction of the total obligation for reimbursement to the United States as set for in this paragraph.

The payment referred to above shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the Site name and the civil action number of this case and shall be sent to:

EPA Superfund, Region VI
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251

A copy of the check and the letter enclosing the check shall be submitted to the counsel of record for the United States at the following address:

Chief
Environmental Enforcement Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

and to EPA at the following address:

Regional Counsel (6C-W)
United States Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

IX. COVENANT NOT TO SUE

A. In consideration of the payments that will be made by the Settlers under the terms of the Decree, and except as specifically provided herein, the United States covenants not to sue or take any administrative action against the Settlers for any civil or administrative liability to the United States under CERCLA, including future liability, resulting from any release or threatened release of a hazardous substances, which release or threatened release is addressed by the Remedial Action, except for any future removal or remedial actions taken at the Site beyond the scope of the Remedial Action described in the ROD. With respect to future liability, the Covenant Not to Sue shall take effect upon payment in full of the total amount due under this Decree.

B. The Settlers hereby covenant not to sue the United States, including any and all departments, agencies, officers,

administrators, and representatives thereof, for any claim, counter-claim, or cross-claim asserted, or that could have been asserted, arising out of or relating to the Site.

C. The provisions of Paragraph A and B of this Section shall not apply to the following claims:

1. Claims based on a failure by the Settlers to fulfill the requirements of this Decree;
2. Claims for costs incurred by the United States as a result of the failure of the Settlers to fulfill the requirements of the Decree;
3. Claims based on criminal liability;
4. Claims based on liability arising from hazardous substances removed from the Site by any Party.

Notwithstanding any other provision of this Decree, the United States reserves the right to institute proceedings in a new action, or to issue an administrative order seeking to compel the Settlers (1) to perform additional response actions at the Site or (2) to reimburse the United States for additional costs of response if

1. conditions at the Site, previously unknown to the United States or its contractors, are discovered after the entry of this Decree, or
2. information is received, in whole or in part, after the entry of this Decree,

and the EPA Administrator or his delegate finds, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action at the Site is not protective of human health and the environment.

D. With regard to claims for contribution against Settlers for matters addressed in this Decree, the Parties agree that Settlers are entitled, as of the effective date of this Decree, to such protection from contribution actions or claims as provided in Section 113(f)(2), 42 U.S.C. § 9613(f)(2). The United States shall be under no obligation to assist the Settlers in any way in pursuing or defending against suits for contribution brought against the Settlers. Nothing in this paragraph shall be deemed to modify the provisions of 40 C.F.R. § 2.401 et seq.

E. In consideration of the United States' covenant not to sue contained in paragraph A. of this Section, the Settlers agree not to assert any claims or causes of action against the Hazardous Substance Superfund arising from any activity performed or expenses incurred pursuant to this litigation or under this Decree or arising from remedial activities at the Site.

X. RESERVATION OF RIGHTS AND RETENTION OF CLAIMS

A. By entering this Decree the Parties do not release or covenant not to sue any other persons or entities, not party to this Decree, from any claims or liabilities which may exist. The right to pursue such claims or liabilities is expressly reserved.

B. This Decree does not create any private causes of action in favor of any person not a signatory to this Decree from any liability, duty, responsibility, or obligation which they

otherwise might have at law or equity relative to any party not a signatory hereto.

C. The entry of this Decree shall not be construed to be an acknowledgement by the Settlers that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by the Settlers shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding except in one to enforce the terms of this Decree. Further, Settlers do not admit, and specifically deny, responsibility for the disposal of materials at the Site and deny any legal or equitable liability under any statute, regulation, ordinance, or common law for any response costs or damages caused by storage, treatment, handling, disposal, or presence of materials or actual or threatened release of materials at the Site.

D. Nothing in this Decree shall be deemed to limit the response authority of the United States pursuant to any federal response authority under any law.

E. Except as otherwise provided in this Decree, the Settlers reserve all rights, defenses, claims, causes of action or counterclaims which they may have at law or in equity to defend against any person or other entity not a signatory to this

Decree for any liability it may have arising out of or relating to the Site.

F. The Settlers shall have the benefit of Section 113(f) of CERCLA and any other applicable rights to limit their liability to persons or entities not parties to this Decree, to seek contribution, together with any other equitable or legal remedy which the Settlers may have, from any person or entity not a party to this Decree for costs incurred or any other relief with respect to the Site in order to enable the Settlers to recover the full relief available to them at law or in equity.

G. Nothing in this Decree is intended to be or shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any of the Settlers for:

(a) Failure to make the payment required herein;

or

(b) Any matters not expressly included herein.

H. Cashout Settlers waive any defenses based upon the doctrines of res judicata, collateral estoppel and/or claim-splitting which Settlers may have in this action or any other proceeding as to any claim by the United States for further remediation at the Site other than the Source Control Operable Unit.

XI. STIPULATED PENALTIES

In addition to any other remedies or sanctions available to the United States, any Settler who fails or refuses to comply with any term or condition of this Decree shall be subject to a civil penalty of up to \$25,000 per day.

XII. MODIFICATION

There shall be no modification of this Decree without written approval of all parties to this Decree and entry by the Court.

XIII. TERMINATION AND SATISFACTION

The provisions of this Decree shall be deemed satisfied upon the Settlers' receipt of written notice from EPA that payment in full of the total amount due under this Decree has been received.

XIV. SEVERABILITY

The nullification of any or more provisions of this Decree, either by agreement of the Parties or by judicial action shall not affect the validity or effectiveness of the remaining provisions.

XV. SECTION HEADINGS

The section headings set forth in this Decree and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Decree.

XVI. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the Parties to this action for the

duration of this Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Decree or for any further relief as the interest of justice may require.

XVII. PUBLIC COMMENT

This Decree is subject to public comment for a period of not less than 30 days from the date of publication of notice in the Federal Register.

XVIII. EFFECTIVE DATE

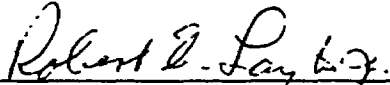
This Consent Decree is effective upon the date of its entry by the Court.

SIGNED this _____ day of _____, 199__.

United States District Judge

SHERIDAN SUPPLEMENTAL CONSENT DECREE

For the U.S. Environmental Protection Agency



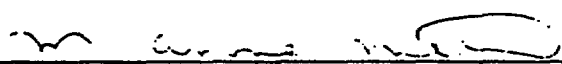
ROBERT E. LAYTON JR.
Regional Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Date: 3/19/91



PAMELA PHILLIPS
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Date: 3/19/91



M. ANNE MILLER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2773

Date: 3/19/91

SHERIDAN SUPPLEMENTAL CONSENT DECREE

The undersigned, as authorized representative of Massey Grinding Services, Inc., has reviewed the Consent Decree and evidences its agreement thereto by his/her signature.


Signature

3-2-91
Date

President
Title

FOR: MASSEY GRINDING SERVICES, INC.

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SHERIDAN SUPPLEMENTAL CONSENT DECREE

The undersigned, as authorized representative of Robinson Iron & Metal Company, has reviewed the Consent Decree and evidences its agreement thereto by his/her signature.

William P. Pulverstein
Signature

3/4/91
Date

Attorney at Law
Title

FOR: ROBINSON IRON & METAL COMPANY

SHERIDAN SUPPLEMENTAL CONSENT DECREE

The undersigned, as authorized representative of Olshan Demolishing Company has reviewed the Consent Decree and evidence its agreement thereto by his/her signature.

Bill Smith
Signature

1/10/71
Date

Manager, Concrete Division
Title

FOR: OLSHAN DEMOLISHING COMPANY

SHERIDAN SUPPLEMENTAL CONSENT DECREE

The undersigned, as authorized representative of Ploss Industries, Inc., has reviewed the Consent Decree and evidences its agreement thereto by his/her signature.



Signature

January 3, 1991

Date

President

Title

FOR: PLOSS INDUSTRIES, INC.

SHERIDAN SUPPLEMENTAL CONSENT DECREE

The undersigned, as authorized representative of Pacific Molasses Company, has reviewed the Consent Decree and evidences its agreement thereto by his/her signature.

Harold Line

Signature

7/15/71

Date

V. A. Pate

Title

FOR: PACIFIC MOLASSES COMPANY.